

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DIVISION

ACCESS 4 ALL, INC. a Florida not for profit)	
corporation, and PETER SPALLUTO,)	Case No.
Individually,)	
)	Magistrate Judge
Plaintiffs,)	
)	
vs.)	
)	
TRUMP INTERNATIONAL HOTEL & TOWER,)	
and ONE CENTRAL PARK WEST PT)	
ASSOCIATES LIMITED PARTNERSHIP, a)	
Delaware Limited Partnership,)	
)	
Defendants.		
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COMPLAINT
(Injunctive Relief Demanded)

Plaintiffs, ACCESS 4 ALL, INC., a Florida not for profit corporation, and PETER SPALLUTO, Individually, on their behalf and on behalf of all other individuals similarly situated, (sometimes referred to as “Plaintiff” or “Plaintiffs”), hereby sue the Defendants, TRUMP INTERNATIONAL HOTEL & TOWER, and ONE CENTRAL PARK WEST PT ASSOCIATES LIMITED PARTNERSHIP, a Delaware Limited Partnership (sometimes referred to as “Defendant”), for Injunctive Relief, and attorney’s fees, litigation expenses, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. (“ADA”).

JURISDICTION AND VENUE

1. Pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, this Court has been given original

jurisdiction over actions which arise from the Defendants' violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. See also 28 U.S.C. § 2201 and § 2202.

2. Venue is properly in the United States District Court for the SOUTHERN DISTRICT of NEW YORK because venue lies in the judicial district of the property situs. The Defendants' property is located in and does business within this judicial district.
3. Plaintiff, PETER SPALLUTO, is an individual residing at 610 East Sample Road, Pompano Beach, Florida 33064, in the County of Broward.
4. Plaintiff, ACCESS 4 ALL, INC., is a group formed under the laws of the State of Florida. ACCESS 4 ALL, INC. maintains its principal office at 3200 N. Palm Aire Drive, #505, Pompano Beach, Florida 33069.
5. Defendants' property, TRUMP INTERNATIONAL HOTEL & TOWER is located at One Central Park West, New York (Manhattan), New York in the county of New York.

STATUTORY BACKGROUND

6. On July 26, 1990, Congress enacted the Americans with Disabilities Act of 1990, establishing important civil rights for individuals with disabilities, including the right to full and equal enjoyment of goods, services, facilities, privileges, and access to places of public accommodation.
7. Among other things, Congress made findings in 42 U.S.C. § 12101 (a)(1)-(3), (5) and (9) that included:
 - a. Some 43,000,000 Americans have one or more physical or mental disabilities, and

this number is increasing as the population as a whole is growing older;

- b. Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
 - c. Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting and access to public services;
 - d. Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and regulation to lesser services, programs, activities, benefits, jobs or other opportunities; and
 - e. The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.
8. Congress also explicitly stated in 42 U.S.C. §12101 (b)(1)(2) and (4) that the purpose of the Americans with Disabilities Act was to:
- a. Provide a clear and comprehensive national mandate for the elimination of

- discrimination against individuals with disabilities;
- b. Provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and,
 - c. Invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.
9. Furthermore, pursuant to 42 U.S.C. § 12182 and 28 CFR 36.201(a), Congressional intent was for no place of public accommodation to discriminate against an individual, on the basis of such individual's disability, with regard to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations at that place of public accommodation.
10. Congress provided commercial businesses at least 18 months from enactment make their facilities compliant to the regulations in the Americans with Disabilities Act. The effective date of Title III of the ADA was January 26, 1992, or January 26, 1993, if the Defendant has ten (10) or fewer employees and gross receipts of \$500,000 or less. 42 U.S.C. § 12181; 28 CFR 36.508(a).

THE PARTIES AND STANDING

11. Plaintiff, ACCESS 4 ALL, INC., is a non-profit Florida corporation. Members of this organization include individuals with disabilities as defined by the ADA, and are representative of a cross-section of the disabilities to be protected from discrimination by the ADA. The purpose of this organization is to represent the interest of its members by assuring places of public accommodation are accessible to and usable by the disabled and that its

members are not discriminated against because of their disabilities. ACCESS 4 ALL, INC. and its members have suffered and will continue to suffer direct and indirect injury as a result of the Defendants' discrimination until the Defendants are compelled to comply with the requirements of the ADA. One or more of its members has suffered an injury that would allow it to bring suit in its own right. ACCESS 4 ALL, INC. has also been discriminated against because of its association with its disabled members and their claims.

12. Plaintiff, PETER SPALLUTO is a Florida resident, is sui juris and qualifies as an individual with disabilities as defined by the ADA. PETER SPALLUTO has visited the property which forms the basis of this lawsuit and plans to return to the property to avail himself of the goods and services offered to the public at the property. The Plaintiff has encountered architectural barriers at the subject property. The Plaintiff is also a member of the Plaintiff organization, ACCESS 4 ALL, INC. discussed above in paragraph 11.
13. The barriers to access at the property have endangered his safety.
14. ACCESS 4 ALL, INC. and PETER SPALLUTO have a realistic, credible, existing and continuing threat of discrimination from the Defendant's non-compliance with the ADA with respect to this property as described but not necessarily limited to the allegations in paragraph 19 of this complaint.
15. Defendants, own; or lease; or lease to; or operate a place of public accommodation as defined by the ADA and the regulations implementing the ADA, 28 CFR 36.201(a) and 36.104. Defendants are responsible for complying with the obligations of the ADA. The place of public accommodation that the Defendants own, operate, lease or lease to is known as TRUMP INTERNATIONAL HOTEL & TOWER, and is located at One Central Park

West, New York (Manhattan), New York.

16. Plaintiffs have reasonable grounds to believe that they will continue to be subjected to discrimination in violation of the ADA by the Defendant.
17. PETER SPALLUTO desires to visit TRUMP INTERNATIONAL HOTEL & TOWER not only to avail himself of the goods and services available at the property but to assure himself that this property is in compliance with the ADA so that he and others similarly situated will have full and equal enjoyment of the property without fear of discrimination.
18. The Defendants have discriminated against the individual Plaintiffs and members of the corporate Plaintiff organization by denying them access to, and full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of the buildings, as prohibited by 42 U.S.C. § 12182 et seq.

THE INSTANT CLAIM

19. The Defendants have discriminated and are continuing to discriminate against the Plaintiffs in violation of the ADA by failing to, inter alia, have accessible facilities by January 26, 1992 (or January 26, 1993 if Defendant has 10 or fewer employees and gross receipts of \$500,000 or less). A preliminary inspection of TRUMP INTERNATIONAL HOTEL & TOWER has shown that violations exist. These violations include, but are not limited to:

Entrance Access and Path of Travel

- A. There is not a continuous path of travel connecting all essential elements of the facility, in violation of Sections 4.3.1 and 4.3.2 of the ADAAG.
- B. There is no means of emergency egress or area of rescue assistance provided at the facility violating the requirements of Section 4.3.11 of the ADAAG.

Access to Goods and Services

- A. There are protruding objects present throughout the facility, in violation of Section 4.4 of the ADAAG.
- B. There are permanently designated interior spaces without proper signage in violation of Section 4.30.6 of the ADAAG.
- C. There are counters throughout the facility in excess of 36", in violation of Section 7.2(1) of the ADAAG.
- D. There are self-service areas with dispensers whose controls are outside of the reach ranges prescribed in Section 4.2 of the ADAAG.
- E. There are recreational areas for public use at the facility without the required disabled use elements, in violation of several Sections of the ADAAG.
- F. There is insufficient clear floor space to access goods or services at the facility, in violation of several Sections of the ADAAG.

Restrooms

- A. There are no disabled restrooms at this facility in violation of several Sections of the ADAAG.
- B. There are doors in the restroom that lack the required maneuvering clearances violating Section 4.13.6 of the ADAAG.
- C. There are exposed pipes in restrooms at the facility, violating of Section 4.19.4 of the ADAAG.
- D. The sinks in the restroom provided do not meet the requirements prescribed in Section 4.24 of the ADAAG.
- E. The clear floor space provided in the restroom violates the provisions of Sections 4.2.1, 4.18.3 and 4.22 of the ADAAG.
- F. The water closets that are provided for public use at the facility violate the provisions of Section 4.16 of the ADAAG.
- G. There are dispensers provided for public use in the restrooms with controls outside the ranges prescribed in Section 4.27 of the ADAAG.

- H. There are storage areas provided for patrons of the facility that are inaccessible, violating the provisions of the ADAAG.
- I. There are amenities provided for public use that do not comply with the requirements of the ADAAG.

Accessible Guest Rooms

- A. There are an insufficient number of disabled guest rooms in violation of Section 9.1.2 of the ADAAG.
- B. There are an insufficient number of guest rooms for persons with hearing impairments in violation of Section 9.1.3 of the ADAAG.
- C. The disabled rooms are not dispersed among the various classes of sleeping accommodations in violation of Section 9.1.4 of the ADAAG.
- D. The clear width and/or maneuvering clearances at the bedroom door to the facility are less than the prescribed minimums, in violation of Sections 4.13.5 and 4.13.6 of the ADAAG.
- E. The rooms designated for disabled use do not provide a roll-in shower for use by the disabled, violating Section 9 of the ADAAG.
- F. The rooms designated for disabled use do not provide a 36-inch clear floor space on both sides of the bed in violation of Section 9 of the ADAAG.
- G. The bed(s) provided are not on above ground frames as required in Section 9 of the ADAAG.
- H. There are areas for storage provided without the clear floor space prescribed in Sections 4.2 and 9 of the ADAAG.
- I. The rooms designated for disabled use do not provide elements equipped for use by the hearing and/or visually impaired violating Section 9 of the ADAAG.
- J. The sinks in the restroom provided in the room designated for disabled use do not meet the requirements prescribed in Sections 4.24 of the ADAAG.
- K. The clear floor space provided in the restroom of the room designated for disabled use violates the provisions of Sections 4.18.3 and 4.22 of the ADAAG.
- L. The clear width and/or maneuvering clearances at doors to the facility are less than

the prescribed minimums, in violation of Sections 4.13.5 and 4.13.6 of the ADAAG.

- M. The grab-bars in the restroom provided in the room designated for disabled use do not comply with the requirements prescribed in Sections 4.17.6 and 4.26 of the ADAAG.
- N. The mirrors and dispensers provided in the restroom provided in the room designated for disabled use are in violation of the requirements in Section 4.19 and 4.27 of the ADAAG.
- O. There is no clear path of travel provided between all elements provided in the room designated for disabled use violating Sections 4.3 and 9 of the ADAAG.
- P. The fixtures in the disabled use room have controls that are not easily operated with a closed fist in violation of the ADAAG.

Indoor Pool

- A. There is no water access for a wheelchair user in violation of Section 9.1.1 of the ADAAG
20. The discriminatory violations described in paragraph 19 are not an exclusive list of the Defendants' ADA violations. Plaintiffs require the inspection of the Defendants' place of public accommodation in order to photograph and measure all of the discriminatory acts violating the ADA and all of the barriers to access.
21. Defendants are required to remove the existing architectural barriers to the physically disabled when such removal is readily achievable for its place of public accommodation that has existed prior to January 26, 1992, 28 CFR 36.304(a); in the alternative, if there has been an alteration to Defendants' place of public accommodation since January 26, 1992, then the Defendants are required to ensure to the maximum extent feasible, that the altered portions of the facility are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally if the Defendants' facility is

one which was designed and constructed for first occupancy subsequent to January 26, 1993 as defined in 28 CFR 36.401 then the Defendants' facility must be readily accessible to and useable by individuals with disabilities as defined by the ADA.

22. Appendix A to Part 36 - Standards for Accessible Design (28 CFR Part 36, App. A) sets out guidelines for accessibility for buildings and facilities. These guidelines are to be applied during design, construction and alteration of such buildings and facilities to the extent required by regulations issued by Federal Agencies, including the Department of Justice, under the ADA.
23. Defendants have discriminated against the individual and corporate Plaintiffs by denying them access to full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of its place of public accommodation or commercial facility in violation of 42 U.S.C. § 12181 et seq., and 28 CFR 36.302 et seq. Furthermore, the Defendants continue to discriminate against the Plaintiff, and all those similarly situated by failing to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities; and by failing to take such efforts that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.
24. The individual Plaintiff, the members of the Plaintiff's group and all other individuals similarly situated have been denied access to, and have been denied the benefits of services, programs and activities of, the Defendant's buildings and its facilities, and have otherwise

been discriminated against and damaged by the Defendants because of the Defendants' ADA violations, as set forth above. The individual Plaintiff, the members of the Plaintiff's group and all others similarly situated will continue to suffer such discrimination, injury and damage without the immediate relief provided by the ADA as requested herein. In order to remedy this discriminatory situation, the Plaintiff requires an inspection of the Defendants' place of public accommodation in order to determine all of the areas of non-compliance with the Americans with Disabilities Act.

25. Plaintiffs have retained the undersigned counsel and are entitled to recover attorney's fees, costs and litigation expenses from the Defendants pursuant to 42 U.S.C. § 12205 and 28 CFR 36.505.
26. Notice to Defendants is not required as a result of the Defendants' failure to cure the violations by January 26, 1992 (or January 26, 1993 if Defendant has 10 or fewer employees and gross receipts of \$500,000 or less). All other conditions precedent have been met by Plaintiff or waived by the Defendants.
27. Plaintiffs are without adequate remedy at law and are suffering irreparable harm.
28. Pursuant to 42 U.S.C. § 12188, this Court is provided authority to grant Plaintiffs Injunctive Relief including an order to alter TRUMP INTERNATIONAL HOTEL & TOWER to make those facilities readily accessible and useable to the Plaintiffs and all other persons with disabilities as defined by the ADA; or by closing the facility until such time as the Defendant cures its violations of the ADA.

WHEREFORE, Plaintiffs respectfully request:

- a. The Court issue a Declaratory Judgment that determines that the Defendants at the

commencement of the subject lawsuit is in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq.

- b. Injunctive relief against the Defendants including an order to make all readily achievable alterations to the facility; or to make such facility readily accessible to and usable by individuals with disabilities to the extent required by the ADA; and to require the Defendants to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities; and by failing to take such steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.
- c. An award of attorney's fees, costs and litigation expenses pursuant to 42 U.S.C. § 12205.
- d. Such other relief as the Court deems just and proper, and/or is allowable under Title III of the Americans with Disabilities Act.

Respectfully Submitted,

Lawrence A. Fuller, Esquire
FULLER, FULLER AND ASSOC., P.A.
Attorney for Plaintiffs
12000 Biscayne Blvd., Suite 609
North Miami, FL 33181
(305) 891-5199 - Dade
(954) 463-6570 - Broward
(305) 893-9505 - Fax

By: /s/
Lawrence A. Fuller, Esquire
Bar Number: LAF 5450

Date: 9-24-04

and

By: /s/
Mario Mikelinich
Bar Number MBM 8712

Mario Mikelinich, P.C.
Co-Counsel for Plaintiffs
6800 Jericho Turnpike, Suite 104W
Syosset, New York 11791
(516) 822-7700
(516) 822-7714 - Fax

Date: 9/24/04